

CHAPTER NO. 618

HOUSE BILL NO. 2890

By Representatives Head, Fitzhugh, Hood, Walker

Substituted for: Senate Bill No. 2411

By Senators Graves, Atchley

AN ACT to amend Tennessee Code Annotated, Section 7-82-307; Section 7-82-402(c) and Section 7-82-702, relative to utilities.

WHEREAS, over the years, the general assembly has enacted a number of amendments to Tennessee Code Annotated, Section 7-82-307, thereby creating many different methods for filling vacancies occurring on utility district boards of commissioners across the state; and

WHEREAS, at this time, the general assembly desires to achieve greater uniformity in the methods for filling such vacancies and to provide mechanisms for achieving even greater uniformity without enactment of more general bills of local application or private acts; and

WHEREAS, the general assembly desires the various appointing and electing authorities to give due consideration to the need for racial, gender, age and ethnic minority diversity on utility district boards of commissioners; now, therefore:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited as, the "Utility District Commissioner Selection Reform Act of 2004".

SECTION 2. Tennessee Code Annotated, Section 7-82-307, is amended by deleting subsections (a) through (nn) and by substituting instead the following:

(a)(1) Each utility district shall have three (3) commissioners, except those multi-county utility districts and utility districts having a greater number of commissioners on the effective date of this act.

(2) Each utility district shall select board members using the selection method set forth in subdivisions (a)(4) and (a)(5), except those utility districts using other selection methods on the effective date of this act shall continue to use such other methods to fill vacancies.

(3) The term of office of each commissioner shall be four (4) years after the initial appointment by the county mayor to create staggered terms, except for replacement commissioners filling unexpired terms. Each member, upon expiration of such member's term, shall continue to hold office until a successor is appointed or elected and qualified.

(4) Vacancies on the board of commissioners shall be filled by appointment of the county mayor, except in those utility districts using other selection methods on the effective date of this act. Within sixty (60) days after the occurrence of a vacancy in the office of any commissioner caused by death, resignation, disability, or forfeiture of office, and no later than thirty (30) days prior to the expiration of the term of office of any incumbent commissioner, the board

of commissioners or its remaining members shall select three (3) nominees to fill such office, in full accordance with any residential requirements that may apply to the office vacated or to be vacated, and under the seal of the board of commissioners, shall certify such list of nominees in order of preference recommended by such commissioners, to the county mayor of the county in which the utility district or its principal office is located; or of the county in which the commissioners of the district customarily meet if the district has no principal office. Within twenty-one (21) days after the issuance of certification by the board of commissioners to the county mayor, the county mayor may enter an order either appointing one (1) of the nominees or rejecting the entire list or may refrain from taking any action, in which event the first name on the list of nominees shall be deemed appointed to fill the vacancy or new term by operation of law. Any order either appointing or rejecting a list of nominees shall be entered of record on the minutes of the county legislative body and a certified copy thereof shall be furnished to the board of commissioners and to the appointee; provided, that upon the rejection of any entire list of nominees by the county mayor, the board of commissioners shall continue to submit new nonidentical lists of three (3) nominees to the county mayor within sixty (60) days after each such rejection until such procedure shall result in the vacancy being filled for the remainder of the term or for the new term, as herein provided.

(5) The same procedure shall be followed in filling vacancies occurring on the board of commissioners of multi-county utility districts, except that the board of commissioners, in certifying the list of nominees to the county mayor to which such certification is required to be made, shall send copies thereof to the county mayor of every county named in a prior order creating or recreating such utility district; and the original certification shall include a statement listing all counties to whose county mayors copies thereof shall be furnished. The various county mayors may thereupon agree to a meeting time and meeting place to select such successor, and if they fail to so agree, within fifteen (15) days following the issuance of such certification by the board of commissioners, the county mayor to whom the certification shall have been addressed shall notify all the other county mayors entitled to participate in the appointment of the time, date and place of a meeting scheduled to make such appointment, and at such date, time and place, such county mayors as may have assembled shall by majority vote fill the vacancy. In the event of a tie vote, the tied nominee whose name stood the highest on the list of nominees shall be the appointee. The county mayor to whom the list of nominees shall have been certified shall enter an order of record stating the mode of appointment as hereinbefore provided. In all multi-county utility districts, the appointee shall be a resident of the same county as the appointee's predecessor.

(6) The method of filling vacancies set forth in subdivisions (a)(4) and (a)(5) is the uniform method created by the legislature for the filling of vacancies on a utility district board of commissioners. The passage of this act shall be evidence of the legislature's intent to create a uniform general law of statewide application for selecting utility district commissioners.

(7) Notwithstanding any other provision of law to the contrary, the board of commissioners of a utility district which fills vacancies on its boards of commissioners by a method other than appointment by a county mayor or mayors on the effective date of this act may, by resolution, choose to change its present method of selection to appointment by a county mayor or mayors under subdivision (a)(4) or (a)(5). Upon the filing of a certified copy of the resolution with the utility management review board, the board shall enter an order either approving or disapproving the resolution. The board shall approve the resolution

upon finding that a change in the method of filling vacancies to appointment by a county mayor or mayors under subdivision (a)(4) or (a)(5) is in the best interest of the utility district and its customers. All vacancies on the utility district's board of commissioners, which occur after the entry of an order approving the resolution, shall be by appointment by a county mayor or mayors under subdivision (a)(4) or (a)(5). If the Board enters an order disapproving the resolution, then the utility district's method of filling vacancies shall remain unchanged, and the utility district shall continue to fill vacancies under the method the utility district has been using before the adoption of the resolution.

(b)(1) Upon the petition of at least twenty percent (20%) of the customers of a utility district to the utility management review board requesting the removal of a member or members of the utility district board of commissioners, the board shall conduct a contested case hearing within the service area of the utility district on the question of whether such member or members should be removed from office and a new member or members appointed or elected. To be considered by the board, the customer or customers initiating the petition must file a letter of intent to compile and file the petition with the board before the petition is signed. All signatures of customers on the petition must have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. Each customer signing the petition shall include the address at which the customer receives utility service and the date the customer signed the petition. Upon receipt of the petition, the board shall verify the names and status of the signers of the petition to ensure that they are bona fide customers of the utility district and to ensure that all signatures have been obtained within ninety (90) days of the date the notice of intent to compile and file petition is filed with the board. As used in this subsection, "customer" means a person who receives a bill for utility services and pays money for such services. Each utility account shall be entitled to one signature, but no person shall sign the petition more than once. Only one petition to remove a utility district commissioner under this section can be filed in any twelve (12) month period.

(2) If the board concludes the member or members of the utility district board of commissioners has knowingly or willfully committed misconduct in office or has knowingly or willfully neglected to perform any duty imposed upon such member by law, then the board shall issue an order removing such member from office. Any vacancy on the board of commissioners shall then be filled by the selection method used by the utility district to fill vacancies, provided that no member of the board of commissioners ousted by order of the board shall be eligible for reappointment, reelection, or to participate in either the nomination, appointment or election of new members by the board of commissioners.

(c) When the utility management review board reviews the annual financial statements and operations of a financially distressed utility district pursuant to Tennessee Code Annotated, Section 7-82-703, and the utility district fills vacancies on its board of commissioners by a method other than appointment by a county mayor or mayors, the board may elect to hold a public hearing on the issue of whether the method of filling vacancies on the district's board should be changed. If the board elects to hold a public hearing, then the board shall conduct a contested case hearing on this issue within the service area of the utility district. If the board finds that it is in the best interest of the public served by the utility district that the method of filling vacancies on the utility district's board be changed, then the board shall enter an order which provides that all future vacancies on the utility district board will be filled by appointment of

the county mayor or mayors pursuant to the procedures set forth in subdivisions (a)(4) and (a)(5).

(d) Notwithstanding any provision of this section to the contrary, if a utility district board of commissioners fails to undertake the necessary actions as prescribed in this section to provide for the appointment or election of a new commissioner to take office upon the expiration of a term or fill a vacancy which may occur for any reason within the period of time set forth in this section, then the county mayor of the county in which such utility district was incorporated shall have the power and responsibility to make an interim appointment to such board of commissioners until such time as the proper actions required pursuant to this section have been undertaken.

(e) In implementing the provisions of this section, the appointing and electing authorities that fill vacancies on utility district boards of commissioners shall give due consideration to the need for racial, gender, age and ethnic minority diversity on utility district boards of commissioners.

SECTION 3. Tennessee Code Annotated, Section 7-82-402(c), is amended by adding the following language as a new, appropriately designated subdivision:

(6) Notify its customers at least once a year that decisions by a utility district board of commissioners on customer complaints may be reviewed by the utility management review board pursuant to Tennessee Code Annotated, Section 7-82-702(7), and notify its customers at least once a year of the method used to fill vacancies on the utility district's board of commissioners. This notice may be published in a newspaper of general circulation in the county or counties in which the district is situated along with the statement required to be published under Tennessee Code Annotated, Section 7-82-401(d), or may be mailed annually to the district's customers in a separate correspondence, in any annual report or newsletter mailed to the district's customers or other writing provided annually to the district's customers.

SECTION 4. Tennessee Code Annotated, Section 7-82-702, is amended by adding the following language as new, appropriately designated subsections:

(13) Conduct a contested case hearing and issue an order on the question of whether a member or members of a utility district board should be removed from office and a new board or member appointed or elected as provided in Tennessee Code Annotated, Section 7-82-307(b);

(14) Conduct a contested case hearing and issue an order on the question of whether a utility district which fills vacancies on its board using a method other than appointment by a county mayor or mayors should be required to begin filling vacancies under the uniform method for the filling of vacancies set forth by Tennessee Code Annotated, Section 7-82-307(a)(4) and (5) as provided in Tennessee Code Annotated, Section 7-82-307(c); and

(15) Establish, adopt and promulgate in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5, rules that the board deems necessary for the training of utility district commissioners.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it

PASSED: April 22, 2004



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 6th day of May 2004



PHIL BREDESEN, GOVERNOR